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**REMARKS**

The independent claims have been amended as suggested by the Examiner to distinguish over Litman. The independent claims 1 and 21 each recite that the transition piece extends from one spacer cushion pad to the other spacer cushion pad. Further, the claim dependency issue noted to the Examiner has been obviated by the amendments to claims 3, 4, 14, 15, and 17. All of the claims standing in this application are allowable over Litman per se or Litman in view of Lambertz.

However, in the Final Rejection, the Examiner indicated that if the claim language was amended as she suggested, it "would not create a patentable claim over other cited prior art references in an obviousness 103 rejection. The references to Segesser (DE-10305277) and Bertheas (DE 2607 383) with an obviousness rejection using reversal of essential working parts, would read on the independent claims". There was no analysis made of the contents of either Segesser or Bertheas. Further, the citation for Bertheas was an error - it is a French patent and not a German patent.

Applicant respectfully requests withdrawal of the Final Rejection dated July 16, 2009 on the ground that no clear issue has been developed between the Examiner and the Applicant. Applicant has not received a full and fair hearing (§706.07) MPEP. Claims 1 and 21 and the claims dependent thereon are now patentable over Litman. Then what is there to appeal from?

The Final Rejection of July 17, 2009 for the first time suggested an obviousness 103 rejection, but does not explain with particularity the relevance of the individual references or how

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they can be combined. Further, as noted above, Bertheas is a French patent and not a German patent. This information was obtained in a subsequent conferral with the Examiner.

The Segesser and Bertheas patents were first cited in a Notice of References Cited that was part of the Office Action of September 26, 2007. They were never relied upon in any claim rejection and were never mentioned again until the Office Action of July 16, 2009.

Applicant observes that there was a phone interview with the Examiner on May 25, 2009 at which time the Examiner made a suggestion for overcoming the Litman reference, namely, amending the independent claims 1 and 21 to recite that the transition piece extended between the spacer cushion pads. A Supplemental Amendment was filed on May 27, 2009 making this change. However, in the Final Rejection the Examiner required a further amendment to distinguish over Litman. Claims 1 and 21 are herein amended in accord with the suggestions made in the Final Rejection. The claims standing in this application now distinguish over Litman.

Applicant submits that the Final Rejection was premature, erroneous, and should be withdrawn. The citation of Segesser and Bertheas without explanation fails to develop a clear issue between the Examiner and the Applicant as required by §706.07 M.P.E.P. Present practice in the PTO does not sanction hasty and ill-considered final rejections. Applicant should receive the cooperation of the Examiner and prosecution should not be prematurely cut short, as has been done here. Withdrawal of the Final Rejection of July 16, 2009 and issuance of a new and proper action are solicited.

Applicant has considered the two references noted but not actually relied upon by the

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Examiner in rejecting any claims. In Applicant's view these references are no more relevant than Etienne 4,811,727, which was cited earlier by the Examiner, but which is no longer being relied upon.

Applicant submits that the claims standing in this application are patentable over Segesser DE 10305277 A1 or Bertheas FR 2607383 A1. Though the Examiner has not indicated the specific relevance of either Segesser or Bertheas to any of the claims standing in this application, Applicant offers the following comments to show that the claims which are now patentable over Litman, are also patentable over Segesser and/or Bertheas. Segesser describes a tendon bandage 10 that is made of two layers of fabric 12 and 13 that are connected by a joint 14 (par. 0017). The tendon bandage 10 comprises pressure cushions 26, 27 (par. 0019). The Segesser pressure cushions 26, 27 and extension pieces 31,32 are made in one piece from an elastic silicon material. They are provided with a number of burlings 33, which extend from the surface and which create a massage effect. Pressure cushions 26 and 27 run parallel to the Achilles tendon (par. 0020). The pressure cushions 26, 27 and the extension pieces 31, 32 are inserted in the pockets 36, which are located inside of the tendon bandage 10 (par. 0022).

The purpose of the cushions of Segesser is to fill the depressions on both sides the Achilles tendon. Therefore, the cushions level out the differences between the depressions and the Achilles tendon. Additionally, the cushions provide a massage effect on the Achilles tendon. To the contrary, the two spacer cushion pads 24, 25 of the present invention are designed to stand out distinctly relative to the transition piece 26, as described in paragraph 16 of the specification and as shown in Fig. 2. The two cushion spacer pads 24, 25 of the present invention stand out

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with respect to the Achilles tendon, whereas the pressure cushions 26, 27 and the extension pieces 31, 32 of Segesser fill the depressions besides the Achilles tendon and create a massage effect on the Achilles tendon. Clearly, Segesser does not anticipate the present invention.

Bertheas discloses an apparatus for rehabilitation of the Achilles tendon, which comprises pressure cushions 2, 3 connected by a support 1. The pressure cushions 2, 3 are formed to fill the depressions beside the Achilles tendon (page 3, lines 9-13). Between the pressure cushions 2, 3 there is a channel 4 (page 4, lines 10-14). The pressure cushions 2, 3 and the support 1 are part of an ankle support band 8, which has a closing 9, made, for example, of Velcro (page 5, lines 6-10). In another embodiment, the apparatus can be made of a tubular elastic coating 10, which has pockets 11 on the inside (page 5, lines 14-16).

The disclosure of Bertheas is comparable to that of Segesser, but is different from the present invention. As in Segesser, Bertheas describes pressure cushions 2, 3 which fill the depressions beside the Achilles tendon. The pressure cushions 2, 3 are additionally inserted into pockets 5 or 11. This arrangement is unlike that of the present invention where the cushion pads 24, 25 are part of the sock. Bertheas does not teach the present invention as defined in the claims remaining in this application.

Applicant submits that the claims standing in the present application are patentable over Segesser or Bertheas, or the combination of the two patents. The Examiner has failed to offer any explanation as to what is intended by the reversal of parts.

As for claims 7, 10, 14, 17, and 18, does the Examiner intend to include Lambertz in the rejection in combination with Segesser and/or Bertheas? Clearly, the Final Rejection is

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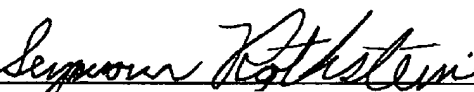
premature and should be withdrawn. Further, as indicated in the above comments, the present claims do distinguish over Segesser and Bertheas and should be allowed.

Prompt withdrawal of the final rejection and allowance of the present application are solicited.

Respectfully submitted,

Date: October 5, 2009

By:



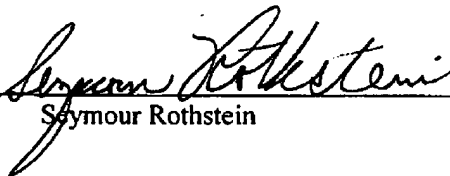
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**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this Amendment and Request For Reconsideration and Withdrawal of the Final Rejection is being transmitted by facsimile to Fax No. 571-273-8300 on October 5, 2009

By:



Seymour Rothstein